

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

JAMEL MCKELVEY,

Petitioner,

v.

CIVIL ACTION NO. 2:16-cv-09900

ANTHONY K. LEONARD,

Respondent.

MEMORANDUM OPINION & ORDER

This action was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and has recommended that the court deny the petitioner's Motion/Petition for a Writ of Habeas Corpus [ECF No. 1] in its entirety and dismiss this civil action from the docket of the court. Prop. Finds. & Rec. [ECF No. 6]. Neither party has filed objections to the Magistrate Judge's findings and recommendations.

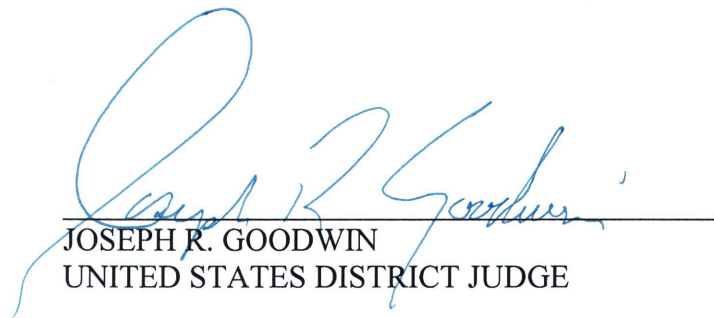
A district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). This court is not, however, required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge

as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). The parties have not filed objections in this case. The court has reviewed the Magistrate Judge's findings of fact and recommendations and finds no clear error on the face of the record. Therefore, the court **ACCEPTS** and **INCORPORATES** herein the findings and recommendation of the Magistrate Judge and **ORDERS** judgment consistent with the findings and recommendations. The court **DENIES** the plaintiff's Motion/Petition for Writ of Habeas Corpus [ECF No. 1].

In ruling on the petitioner's 2241 petition, the court has additionally considered whether to grant a certificate of appealability. *See* 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." *Id.* § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683-84 (4th Cir. 2001). The court concludes that the governing standard is not satisfied in this instance. Accordingly, the court **DENIES** a certificate of appealability.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: January 10, 2017



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE